

16 March 2015

European Banking Authority
Floor 46
One Canada Square
London
E14 5AA

Submitted via the EBA website

Consultation paper on draft RTS on resolution colleges under Article 88(7) Directive 2014/59/EU

Dear Sir / Madam

Please find enclosed the response of the Association for Financial Markets in Europe to the EBA consultation paper on draft Regulatory Technical Standards on resolution colleges under Article 88(7) of Directive 2014/59/EU (EBA/CP/2014/46).

Please do not hesitate to contact us if you have any questions or wish to discuss these issues further.

Yours faithfully



Oliver Moullin
Director, Recovery and Resolution
AFME

Association for Financial Markets in Europe

London Office: St. Michael's House, 1 George Yard, London EC3V 9DH T: +44 (0)20 7743 9300 F: +44 (0)20 7743 9301

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971

Company Registration No: 6996678 Registered Office: St. Michael's House, 1 George Yard, London EC3V 9DH

www.afme.eu

Consultation response

Regulatory Technical Standards on resolution colleges under Article 88(7) of Directive 2014/59/EU (EBA/CP/2014/46)

16 March 2015

The Association for Financial Markets in Europe (“**AFME**”) welcomes the opportunity to comment on the European Banking Authority (“**EBA**”) Consultation Paper (the “**CP**”) on draft Regulatory Technical Standards (“**RTS**”) on the functioning of resolution colleges under article 88(7) of the Bank Recovery and Resolution Directive (2014/59/EU) (the “**BRRD**”).

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.¹

A. General comments on the draft RTS

We are supportive of the EBA’s work in facilitating and encouraging cross-border cooperation in relation to resolution. Resolution colleges form an important part of the framework for cross-border cooperation for banks operating across the EU and play an important role in encouraging information sharing, facilitating resolution planning and coordinating resolution actions. We therefore welcome the EBA’s draft RTS which establishes a framework for the functioning and operation of resolution colleges. We set out below some comments on the draft RTS, followed by our responses to the questions raised in the CP.

Operational functionality of resolution colleges

While we appreciate that the scope of membership of resolution colleges is established in the BRRD, we note that for larger cross-border banks the number of members and observers in the college is likely to be very substantial. We therefore encourage the EBA to ensure that there is sufficient flexibility in the RTS for sub-groups or a “core” resolution college to be formed. For example, the resolution college could be empowered to delegate certain tasks to smaller group(s). This would make operation of the college more streamlined and efficient while retaining the rights under the BRRD for members to vote on decisions that affect them.

Greater flexibility might also be appropriate to align the representation to the resolution strategy for the group. For example a college led by the group level resolution authority is likely to be most appropriate for a group with a single point of entry (“**SPE**”) resolution strategy, but it could be more appropriate for groups with a multiple point of entry (“**MPE**”) strategy within the

¹ AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

EU to have sub-groups of the resolution colleges for each resolution sub-group, coordinated by the group level resolution authority.

It is also necessary to ensure coordination between supervisory and resolution colleges and avoid potential overlap or conflict between them.

Resolution colleges within the global framework and Banking Union

The interaction between resolution colleges under the BRRD and global Crisis Management Groups (“**CMGs**”) established under the FSB framework is currently unclear. While we understand that the EBA’s mandate only relates to resolution colleges under the BRRD and cannot bind third country authorities, it is necessary to avoid duplication of discussions, decision-making and information sharing within CMGs and resolution colleges. It is also critical for banks with operations both within the EU and in third countries that resolution planning, resolvability assessments and resolution actions are coordinated at a global level. This is particularly relevant for third country jurisdictions which have adopted a SPE resolution strategy to be applied at the ultimate holding company level, but it is also important for groups headquartered in the EU with operations in third countries, whether they follow an SPE or an MPE resolution strategy.

We therefore suggest that the RTS should provide as much flexibility as possible for the home authority to manage the functioning of the resolution college and any CMG as it thinks most appropriate, while respecting the decision-making processes in the BRRD.

We suggest that at a minimum it is clarified that the resolution college may operate as a sub-set of the global CMG and that third country CMG members (including those CMG members that would be considered to be “third-country competent authorities” rather than “third-country resolution authorities”) should, subject to the necessary confidentiality requirements, be permitted to participate as observers in the resolution college.

Third countries may have: (a) a different regulatory framework, (b) a different division of tasks among “resolution authorities” and “competent authorities” and/or (c) more than one authority with responsibility for a particular task. We would therefore recommend flexibility in the mapping exercise in article 3 of the draft RTS, to determine the “relevant third-country authorities” (to use the definition in article 2(1)(90) BRRD) to be invited as observers.

There also appears to be potential overlap between the RTS and cross-border institution-specific cooperation agreements (“**COAGs**”) required to be put for G-SIFIs in place under the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions (the “**Key Attributes**”)² and possibly also the agreements with third countries made under article 93 of the BRRD. Again where possible duplication should be avoided, for example perhaps the written arrangements and procedures under article 6 of the draft RTS could be taken from, or at least made consistent with, the COAG or relevant agreement.

Finally, while it might be outside the scope of the RTS, it would be helpful to clarify the impact of the Single Resolution Mechanism on the requirement for and representation at resolution colleges. For example, European resolution colleges are to be established under article 89 of the BRRD where a third country institution or third country parent undertaking has Union subsidiaries or significant branches established in two or more Member States. However, where a third country parent undertaking has subsidiaries or significant branches in two or more Member States which are participating in the Banking Union (and none in non-participating Member States) presumably no such European resolution college would be required.

² See paragraph 9.1 of the Key Attributes.

Active participation of observers

We support the provisions for the participation of third country resolution authorities as observers in resolution colleges. We recommend that the draft RTS supports active engagement with relevant third-country authorities (and vice-versa). This would be consistent with the Key Attributes which emphasise cooperation, information sharing and coordination between home and host authorities.

In our view, resolution colleges will be more effective when there is active participation of relevant third-country authorities. Third country authorities should be more than mere “observers” in the literal sense of the word, and the draft RTS should encourage active participation, albeit the relevant joint decisions will be made according to the requirements of the BRRD. Restricting the participation of third country authorities to a literal “observer” status would limit the effectiveness of the college and decisions made in the college could impact third countries. However, the items to be discussed with third country authorities should be limited to issues that directly impact the group’s operations in that third country.

We suggest that the terms of participation of observers should be agreed between the group level resolution authority and the observer rather than establishing restrictive or inflexible requirements on observers under the RTS. We are therefore concerned that, while it is appropriate that observers share information subject to confidentiality provisions, the proposal in article 9(1) of the draft RTS that “observers ... shall ensure that they exchange ... all essential and relevant information” could prevent third country authorities from becoming observers for fear of being required to share all potentially relevant information. Therefore we suggest that some additional flexibility is appropriate in relation to obligations on observers under the RTS.

Information sharing

Article 9 of the draft RTS appears to overlap with article 90 BRRD and we suggest that the relationship between these provisions should be clarified. We presume that the resolution colleges RTS should provide a framework for sharing information under article 90 and possibly additional information. Information sharing should be utilised to avoid duplicative information requests of a group from different authorities.

We support the proposal in article 16 of the draft RTS for the group level resolution authority to coordinate information requests from host authorities and act as a central disseminator of information. We propose that the RTS should provide for group level resolution authorities to review any request made under article 17(2) and where appropriate make a request from the Union parent undertaking under article 16(4).

We suggest that the RTS should make reference, again perhaps in a recital, to the FSB guidance on information sharing set out in *Information Sharing for Resolution Purposes*, Appendix I, Annex 1, to the Key Attributes. Where possible the RTS should implement these requirements for resolution colleges.

Resolution planning as an ongoing process

We support the proposal for the establishment of a process for taking joint decisions on resolution planning, resolvability assessments and MREL under the RTS. However, in reality we expect that, at least for large banks, resolution planning will be viewed as an ongoing process rather than simply an annual approval process. We suggest that the RTS should take greater account of this and provide a framework for cooperation in developing resolution plans and assessing resolvability more generally in addition to the specific joint decisions under the BRRD.

B. Comments in response to the questions raised in the CP

Q1: Do you have any suggestions regarding the process to be followed by the members of the resolution college for communicating with the Union parent undertaking and with its entities? Comments/suggestions are invited both with regards to the general communication policy under Article 10 and with regards to other aspects of interaction with the group during resolution planning and resolution management.

The draft RTS proposes that only certain aspects of the timetable for joint decisions are communicated to the Union parent undertaking. However, we consider that the full timetable should be communicated to groups to provide them with an understanding of the timing of the entire process.

The draft RTS also provides for dialogue between the group-level resolution authority and the Union parent undertaking on the draft group resolution plan and its resolvability assessment “where this is deemed appropriate”³. We consider that it should always be appropriate for this to take place and therefore propose that the qualification “where this is deemed appropriate by the group-level resolution authority” should be deleted.

Q2: Do you have any suggestions regarding elements of the various joint decisions in resolution planning and in cross-border resolution?

We would like to emphasize the importance of the EBA’s role in mediation in the case of disagreement or failure to reach joint decisions. While this situation should be avoided within the Banking Union, cross-border cooperation is crucial and uncoordinated territorial decisions in relation to resolution and a lack of trust amongst home and host authorities would make orderly and effective resolution of cross-border groups less likely.

³ Article 13(2)(i) of the draft RTS.